Supreme Court, U.S.
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No. 98-___

In The

Supreme Court of the United States

SHERRIE ANN ADCOCK, on behalf of herself and all others similarly situated,

Petitioner,

v.

CHRYSLER CORPORATION, et al.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Does a contemplated car dealer franchise agreement include factors analogous to an "employment relationship" triggering the protections of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (1994) ("Title VII"). This is an issue of first impression. The Ninth Circuit's opinion, *Sherrie Ann Adcock v. Chrysler Corporation, et al.*, 166 F.3d 1290 (9th Cir. 1999), was the first published decision addressing this issue.

PARTIES TO THE PROCEEDING

Petitioner Sherrie Ann Adcock ("Petitioner") brings this action in her individual capacity. While the action was originally filed in the District Court as a class action, a class certification order was not obtained. Respondent is Chrysler Corporation. Chrysler Credit Corp. was originally named as a defendant in the District Court action. Petitioner filed a notice of dismissal as to Chrysler Credit Corp. on January 31, 1996.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported as *Sherrie Ann Adcock v. Chrysler Corporation, et al.*, 166 F.3d 1290 (9th Cir. 1999). (Appendix A, 1-8). The District Court's unpublished Order Granting respondent Chrysler Corporation's ("Chrysler") summary judgment motion was entered on March 25, 1997. (Appendix B, 9-19).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit ("Court of Appeals") was entered on February 8, 1999.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title VII provides, in pertinent part, that "[i]t shall be an unlawful employment practice for an employer to fail or refuse to hire . . . any individual . . . because of such

individual's race, color, religion, sex or national origin." 42 U.S.C. § 2000e-2(a) (1994).

STATEMENT OF THE CASE

This case involves Petitioner's Title VII claim of gender discrimination arising from Chrysler's refusal to grant Petitioner a promised automotive franchise. The sole question presented is whether a Chrysler dealer franchise has "some connection with an employment relationship" for purposes of applying Title VII's protections. *See Baker v. McNeil Island Corrections Center*, 859 F.2d 124, 127 (9th Cir. 1988).

Petitioner is a 20 year veteran of the automotive industry who was denied a Chrysler dealership because she was a woman. After meeting throughout 1991 and 1992 with both Chrysler and Chrysler Credit Corporation, in response to her Chrysler franchise application, Petitioner was tentatively approved in 1993 for financing for a dealership and to become a Chrysler franchisee in Taft, California. Chrysler requires a franchisee to have sufficient capital and financing to operate the dealership. Petitioner satisfied all financing requirements. Subsequently, Chrysler Credit Corporation denied Petitioner's financing request, asserting an entirely false basis for the denial. Petitioner, thereafter, secured alternative financing. Even though Chrysler was aware that Petitioner had secured alternative financing, Chrysler refused to grant Petitioner the Taft, California dealership. Instead, Chrysler granted the dealership to a white male, an attorney, who was less qualified than Petitioner.

Petitioner's contention is that Chrysler's refusal to grant her the Taft, California dealership as promised and, instead, grant it to a less qualified male, constitutes gender discrimination prohibited under Title VII.

In the District Court, Chrysler moved for summary judgment pursuant to Federal Rules of Civil Procedure, Rule 56. The District Court granted Chrysler's motion for summary judgment and judgment was entered on March 28, 1997. (Appendix B, 1). The basis of the District Court's grant of summary judgment and the Ninth Circuit's affirmance of the dismissal, was that the contemplated Chrysler franchise agreement was not an "employment relationship" entitled to Title VII protection.

REASONS FOR GRANTING THE PETITION

A WRIT OF CERTIORARI SHOULD ISSUE BECAUSE THE DISTRICT COURT AND NINTH CIRCUIT ERRED IN HOLDING THAT THE CONTEMPLATED FRANCHISE RELATIONSHIP BETWEEN PETITIONER AND CHRYSLER WAS NOT SUBJECT TO TITLE VII PROTECTION

Title VII applies where there is "some connection with an employment relationship"; however, the connection "need not necessarily be direct." *Baker v. McNeil Island Corrections Center*, 859 F.2d 124, 127 (9th Cir. 1988); *Lutcher v. Musicians Union Local 47*, 633 F.2d 880, 883 (9th Cir. 1980). For example, Title VII "has been interpreted to encompass situations in which a defendant subject to Title VII interferes with the individual's employment opportunities with another employer." *Sibley Memorial Hospital v. Wilson*, 488 F.2d 1338, 1340-1341 (D.C. Cir.

1973). Moreover, Title VII has been found to protect an in custody prisoner; obviously not a typical "employee." *See Baker v. McNeil Island Corrections Center, supra.*

In *Lutcher,* the Ninth Circuit held that determining whether a relationship is one of "employment", in which case Title VII protections apply, or one of "independent contractual affiliation", in which case they do not, *requires a fact-specific inquiry* which *"depends upon the economic realities of the situation."* (Emphasis added.) *Id.* at 883.

The *Lutcher* Court identified a number of factors to be considered when determining whether an employment relationship exists, the primary factor being the extent to which the "employer" has a right to control the means and manner of the "worker's" performance. "While . . . certain factors militate against finding an employment relationship . . . the most important factor – *the extent of the employer's right to control the means and manner of the workers' performance* – 'strongly suggests . . . that the plaintiff was an employee under Title VII'. " *Baker v. McNeil v. Island Corrections Center,* 859 F.2d 124, 127 (9th Cir. 1988). Additional factors are: (1) the kind of occupation, with reference to whether the work usually is done under the direction of a supervisor or is done by a specialist without supervision; (2) the skill required in the particular occupation; (3) whether the "employer" or the individual in question furnishes the equipment used and the place of work; (4) the length of time during which the individual has worked; (5) the method of payment, whether by time or by the job; (6) the manner in which the work relationship is terminated; i. e., by one or both parties, with or without notice and explanation; (7) whether annual leave is afforded; (8) whether the work is

an integral part of the business of the "employer"; (9) whether the work accumulates retirement benefits; (10) whether the "employer" pays social security taxes; and (11) the intention of the parties. *Lutcher v. Musicians Union Local 47, supra* at fn. 5.

The franchise relationship between a Chrysler dealer – Petitioner's expected position – and Chrysler involves essentially *complete control* by Chrysler over the dealer. This control exceeds that normally extant in employment relationships. Although the District Court and the Ninth Circuit characterized Chrysler's role as that of "supervision", Chrysler's dealer franchise agreement articulates numerous "control" factors. (Appendix C, 20-31; Appendix D, 32-34).

Chrysler conceded in the District Court that the Chrysler/franchise dealer relationship is controlled by the *Chrysler Corporation Chrysler/Plymouth Sales and Service Agreement* and the *Chrysler Corporation Sales and Service Agreement Additional Terms and Provisions* (collectively, the "Chrysler Agreements"). (Appendix C, 20-31; Appendix D, 32-34).[1] As explained, the Chrysler Agreements granted Chrysler substantial control over the dealer in every aspect of the dealer's franchise operation.

Moreover, the Chrysler Agreements articulate a fundamental basis of the relationship synonymous with an employer-employee relationship:

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[1] For convenience, Appendix D is a summary of the Additional Terms. The complete Additional Terms are voluminous and were presented as evidence in the District Court.

" . . . the success of those undertakings [the franchisee's dealership operation] rests on a recognition of the mutuality of interest of Dealer and CC [Chyrsler Corp.], and a spirit of understanding and cooperation by both parties in the day to day performance for their respective functions. . . . *CC has entered into this Agreement in reliance upon and has placed its trust in the personal abilities, expertise, knowledge, and integrity of Dealer's principal owners* . . . which CC anticipates *will enable Dealer to perform the personal services contemplated by this Agreement.*" [Appendix C, 20-21.] [Emphasis added.].

Chrysler's "control" over its franchisees includes:

– Chrysler requires that dealers remain open for certain hours and supervises their hours on an ongoing basis [Appendix C & D.];

– Chrysler determines dealer management, experience and supervises who participates in management [Appendix C & D.];

– Chrysler requires that specific named personnel of the dealer be physically on site for specific hours [Appendix C & D];

– Chrysler determines managerial control and ownership [Appendix C & D];

– Chrysler determines which products will be purchased by the dealer and their prices [Appendix C & D];

– Chrysler determines the quantity of products purchased by dealers [Appendix C & D];

– Chrysler has the right to inspect the dealer's books and records at any time [Appendix C & D];

– Chrysler determines the dealership's minimum sales [Appendix C & D];

– Chrysler determines what parts and service will be performed on vehicles [Appendix C & D];

– Chrysler requires that dealers follow all federal and state laws, requiring dealers to pay social security taxes, pay into mandatory retirement funds and other obligations [Appendix C & D];

– Chrysler determines and controls all display areas, salesrooms, service areas, parts and accessories areas, building exteriors and grounds for new and used cars [Appendix C & D];

– Chrysler determines the specific location of the dealership, the business conducted inside the location and the hours of operation [Appendix C & D];

– Chrysler determines the dealer's entire financial make-up, including a dealer's required net working capital, net worth, wholesale credit and retail financing arrangements [Appendix C & D];

– Chrysler determines the minimum number of technicians; and their type and degree of training [Appendix C & D];

– Chrysler determines the minimum number of personnel for new and used motor vehicle sales, lease, service, parts and general management; and their type and amount of training [Appendix C & D];

– Chrysler determines the types of signs that a dealer can display [Appendix C & D];

– Chrysler requires that a dealer advertise and engage in sales promotion [Appendix C & D];

– Chrysler determines a dealer's accounting practices [Appendix C & D];

– Chrysler requires that the dealer maintain electronic data storage, transmission and communication systems and dictates the form of these systems [Appendix C & D];

– Chrysler determines that the dealer maintain minimum numbers of parts [Appendix C & D];

– Chrysler can amend the controlling Chrysler Agreement unilaterally for whatever reason it so desired [Appendix C & D];

– The Chrysler Agreements are preprinted forms which are not subject to negotiation [Appendix C & D];

– The Chrysler Agreements provide for termination by Chrysler on numerous grounds including but not limited to vague terms such as "disagreements," "impairment," and "conduct," which could adversely affect the operation of a dealership, all based on Chrysler's "opinion" [Appendix C & D]; and

– Chrysler can also terminate without notice [Appendix C & D].

Few if any "employment relationships" grant an employer the degree of authority and control granted to Chrysler under the Chrysler Agreements. A Chrysler

"franchise" dealer has less authority and independence than an "employee" of Chrysler manufacturing vehicles on a production line. The contemplated franchise agreement between Petitioner and Chrysler required that Petitioner dedicate all of her working time to running the franchise at the direction and control of Chrysler. Chrysler specifically placed its *trust* in Petitioner if Petitioner became a franchisee. The notion of *trust* is, of course, fundamental to an "employment relationship".

Furthermore, under California substantive law, a franchisee is *an agent of the franchisor* if the franchise agreement gives the franchisor the right of complete or substantial control over the franchisee. *See Kuchta v. Allied Builders Corp.*, 21 Cal. App. 3d 541, 547 (1971). And, under California law, it is not the control actually exercised, but that *which may be exercised* which determines the issue of an employment or independent contract relationship. Witkin, *Summary of California Law*, Ninth Edition, Vol. 2, § 15 at 31 (1987). This is the same analysis discussed in *Lutcher v. Musicians Union Local 47*, 633 F.2d 880 (9th Cir. 1980). Similarly, this Court held in *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318 (1992) that whether an individual is an "employee" for purposes of an ERISA benefits claim is subject to an analysis of common law agency principles.

Thus, as a Chrysler franchisee, Petitioner would clearly have been Chrysler's *agent* and subject to Chrysler's actual and prospective control under the Chrysler Agreements. Under no circumstances could Petitioner be characterized as an independent contractor.

The factors demonstrating "some connection with an employment relationship" articulated in *Lutcher v. Musicians Union Local 47, supra,* are clearly present in the contemplated franchise relationship between Petitioner and Chrysler. Title VII protections should accordingly apply.

CONCLUSION

For these reasons articulated above, the petition for writ of certiorari should be granted.

Respectfully submitted,

JEFFREY S. BENICE
Attorney for Petitioner
Sherrie Ann Adcock

Dated: May 10, 1999

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SHERRIE ANN ADCOCK, on behalf of herself and all others similarly situated, *Plaintiff-Appellant,* v. CHRYSLER CORPORATION, *Defendant-Appellee,* and CHRYSLER CREDIT CORPORATION, *Defendant.*	No. 97-55607 D.C. No. CV-95-01046-GLT OPINION

Appeal from the United States District Court
for the Central District of California
Gary L. Taylor, District Judge, Presiding

Argued and Submitted
December 9, 1998 – Pasadena, California

Filed February 8, 1999

Before: Robert R. Beezer, A. Wallace Tashina, and Kim M. Wardlaw, Circuit Judges

Opinion by Judge Wardlaw

COUNSEL

Jeffrey S. Benice, The Benice Group, Irvine, California, for the plaintiff-appellant.

Susan J. Boyle, Littler Mendelson, San Diego, California, for the defendant-appellee.

OPINION

WARDLAW, Circuit Judge:

This appeal presents the question whether the contemplated car dealer franchise agreement at issue created an employment relationship so as to trigger the protections of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (1994) ("Title VII"). The district court granted summary judgment in favor of Appellee Chrysler Corporation ("Chrysler"), ruling that it did not. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

I

Appellant Sherrie Ann Adcock ("Adcock") brought suit against Chrysler[1] under Title VII, alleging that Chrysler's refusal to award her a dealership in Taft, California, was the result of sex discrimination.[2] The district

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[1] Adcock brought suit against Chrysler and Chrysler Credit Corporation, but voluntarily filed a notice of dismissal as to Chrysler Credit Corp. on January 31, 1996 in the district court.

[2] Adcock also claims that Chrysler's later refusal to award her a dealership in San Juan Capistrano, California, violated Title VII's prohibition against sex discrimination. Although this Court need not reach the question whether the district court correctly found that that claim was not administratively exhausted, the discussion that follows would bar that claim as well.

court granted summary judgment for Chrysler, concluding that Title VII protections did not apply to this case because the contemplated dealer franchise agreement would have constituted a "continuing contract, not an employment relationship" subject to the statute. We review a grant of summary judgment *de novo*. *See Margolis v. Ryan*, 140 F.3d 850, 852 (9th Cir.1998). Our review is governed by the same standard used by the trial court under Federal Rule of Civil Procedure 56(c). *See Ghotra v. Bandila Shipping, Inc.*, 113 F.3d 1050, 1054 (9th Cir.1997), *cert. denied*, ___ U.S. ___, 118 S.Ct. 1034 (1998). We must determine, viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and whether the district court correctly applied the substantive law. *See id.*

II

Title VII provides, in pertinent part, that "[i]t shall be an unlawful employment practice for an employer to fail or refuse to hire . . . any individual . . . because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a) (1994). One of Congress' objectives in enacting Title VII was "to achieve equality of employment opportunities. . . . " *Griggs v. Duke Power Co.*, 401 U.S. 424, 429 (1971). "Consequently, there must be some connection with an employment relationship for Title VII protections to apply." *Lutcher v. Musicians Union Local 47*, 633 F.2d 880, 883 (9th Cir.1980); *see also Baker v. McNeil Island Corrections Ctr.*, 859 F.2d 124, 127 (9th Cir.1988). Title VII protects employees, but does not protect independent contractors. *See Lutcher*, 633 F.2d at 883; *Mitchell*

v. Frank R. Howard Memorial Hosp., 853 F.2d 762, 766 (9th Cir.1988).

Determining whether a relationship is one of employment or independent contractual affiliation requires a "fact-specific inquiry which 'depends on the economic realities of the situation.' " *Id.* (quoting *Lutcher*, 633 F.2d at 883).[3] The primary factor is the extent of the employer's right to control the means and manner of the worker's performance. *See Lutcher*, 633 F.2d at 883. Other factors relevant to the inquiry include, but are not limited to: the kind of occupation, with reference to whether the work usually is done under the direction of a supervisor or by a specialist without supervision; whether the employer furnishes the equipment used and the place of

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[3] In *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318 (1992), the Supreme Court held that whether an individual was an "employee" for purposes of an ERISA benefits claim was subject to an analysis of common law agency principles. The Court's holding applies to statutes that contain the term "employee" and do not otherwise define the term. *See id.* at 321; *Loomis Cabinet Co. v. Occupational Safety & Health Review Comm'n*, 20 F.3d 938, 941 (9th Cir.1994) (applying *Darden* analysis to definition of "employee" in OSHA claim). Title VII defines "employee" exactly as does ERISA. *Compare Lutcher*, 633 F.2d at 883, *with Darden*, 503 U.S. at 323-24. The common law agency approach is essentially indistinguishable from the approach previously used by this Circuit in analyzing "employment relationship" for Title VII purposes. *See Loomis Cabinet*, 20 F.3d at 941-42. However, because the precise question before this Court turns on whether the parties' agreement would have constituted an employment relationship, and not on the definition of employee, we rely on *Lutcher*, which specifically distinguished employment from independent contractual affiliation, *id.* at 883, and was not abrogated by the common law approach to defining "employee" of *Darden*.

work; the method of payment; whether the employer pays social security taxes; the manner in which the work relationship is terminated; and the intention of the parties. *See id.* at n.5.

The parties agree that Chrysler's "Sales and Service Agreement" and "Additional Terms and Provisions" (collectively, the "Agreement") would have governed their relationship had Chrysler awarded Adcock a dealership. The Agreement is the only relevant evidence in the record regarding whether the relationship contemplated by the parties was an employment relationship subject to Title VII.

The overwhelming majority of the *Lutcher* factors support the district court's holding that Chrysler and Adcock contemplated an independent contractual affiliation rather than an employment relationship. Under the Agreement, the dealer, not Chrysler, controls the dealership and the day-to-day vehicle-selling operations. The Agreement does not specify that the dealer must utilize any particular means or manner to sell Chrysler's vehicles, but states only that the dealer is to use its "best efforts to promote energetically and sell aggressively and effectively." The dealer maintains discretion over dealership employment decisions, and over the means and manner of advertising. Further, even though the Agreement requires the dealer to conduct its operations "at least during the hours usual in the trade" of the dealer's sales locality, the actual hours of the dealership are left to the dealer's discretion. *See Barnhart v. New York Life Ins. Co.*, 141 F.3d 1310, 1313 (9th Cir.1998) (appellant's "free[dom] to operate his business as he saw fit without

day-to-day instructions" weighed in favor of independent contractor status).

Under the Agreement, the dealer, not Chrysler, owns the dealership, premises, equipment and vehicles sold by the dealership. This weighs strongly in favor of finding an independent contractual affiliation. *Cf. Loomis Cabinet*, 20 F.3d at 942 ("most significant[ ]" factor in support of finding employment relationship was that employer owned work site and provided all equipment, and employees provided only labor); *Mitchell*, 853 F.2d at 766 (provision by radiologist of services at hospital, partially with equipment provided by the hospital, supported finding that radiologist was hospital employee, not independent contractor).

Chrysler does not pay the dealer a salary or wage. Rather, the dealer generates income by selling vehicles it owns to consumers. In fact, the dealer receives no compensation from Chrysler. Chrysler does not pay social security taxes for the dealer, nor does it provide retirement, health care, worker's compensation or vacation benefits to the dealer or the dealer's employees, all of which are usually associated with employment. *See Barnhart*, 141 F.3d at 1314.

That both parties are entitled to terminate the relationship upon written notice, and certain conditions must exist for Chrysler to terminate, demonstrate that Chrysler does not have exclusive control over the manner in which the agreement may be terminated, and thus that the relationship would not have been one of employment. *See Lutcher*, 633 F.2d at 883 n.5.

Finally, the intention of the parties supports the finding that the relationship was to be one of independent contractual affiliation. The Agreement explicitly provides, "[t]his Agreement does not create the relationship of principal and agent between [Chrysler] and [the dealer], and under no circumstances is either party to be considered the agent of the other." This clear language, though not dispositive, reflects the parties' intention that Adcock would have been an independent contractor, not an employee. *See Barnhart*, 141 F.3d at 1313 (independent contractor status supported where, *inter alia*, appellant signed contract containing clear language that he would be considered an independent contractor, not an employee); *accord Mangram v. General Motors Corp.*, 108 F.3d 61, 63 (4th Cir.1997) (Memorandum of Understanding that "specifically provided that [claimant] was not an employee" signed by claimant contributed to finding of independent contractor status).

Adcock asserts that certain aspects of the Agreement demonstrate ways in which Chrysler would "control" the "manner and means" by which the dealer performs. For instance, Chrysler determines which products the dealer may purchase and sets minimum sales requirements. Chrysler also retains the right to approve the appearance of the dealership and may specify the dealership location. The dealership must meet certain financial standards including net working capital, net worth, wholesale credit and retail financing. Further, the dealer must engage in advertising and sales promotion programs, and Chrysler must be allowed easy access to and use of the dealer's accounting and other information.

Although a few terms of the Agreement weigh in favor of an employment relationship, all of the factors

must be considered as a whole in determining employment/independent contractor status. *See Barnhart*, 141 F.3d at 1313. On balance, because the overwhelming majority of factors weigh in favor of independent contractor status, we conclude that the Agreement contemplated by Chrysler and Adcock would not have created an employment relationship. Our analysis is bolstered by the Fourth Circuit's decision in *Mangram*, 108 F.3d at 63-64, in which our sister circuit held that a prospective automobile dealer, had he been granted a dealership, would not have been considered an employee of the automobile manufacturer because of the substantial independence enjoyed by dealers.[4] Therefore, the district court correctly held that Title VII does not apply to Adcock's claims.

III

We conclude that the district court did not err in granting summary judgment for Chrysler on Adcock's Title VII claim. We do not reach the merits of Adcock's discrimination claim because we affirm on the ground that the contemplated Agreement would not have created an employment relationship subject to Title VII. The judgment appealed from is affirmed.

AFFIRMED.

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[4] Although *Mangram* and *Barnhart* involved claims under the ADEA, complementary sections of the ADEA and Title VII are construed consistently. *See Romain v. Shear*, 799 F.2d 1416, 1418 (9th Cir.1986) (*citing Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 756 (1979)).

APPENDIX B

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHERRIE ANN ADCOCK, on Behalf of Herself and All Others Similarly Situated, Plaintiffs, vs. CHRYSLER CORPORATION, et al. Defendants.	Case No. SACV 95-1046 GLT (EEx) ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (Filed Mar. 28, 1997)

Defendant Chrysler Corporation's motion for summary judgment is GRANTED.

For over 19 years, Plaintiff Sherrie Ann Adcock worked in a variety of middle management positions for automotive dealerships. In her complaint, she alleges Defendant Chrysler Corporation deterred her from applying for a dealer franchise because of her gender. She also alleges Defendant refused to permit her to participate in its minority program. Finally, she alleges Defendant rejected her application for a dealership because of her gender. Specifically, Plaintiff alleges Defendant refused her application for a Chrysler franchise in Taft, California, in 1992. According to Plaintiff, Defendant ultimately awarded the Chrysler dealer franchise in Taft to a man.

After filing a claim with the EEOC, Plaintiff filed this class action lawsuit against Defendant Chrysler Corporation and Defendant Chrysler Credit Corporation. Plaintiff

has since voluntarily dismissed Chrysler Credit Corporation. This Court granted Chrysler's motion to dismiss last February, finding Plaintiff failed to establish Chrysler was to be her "employer" as that term applies under Title VII. The Court allowed Plaintiff leave to amend. Chrysler now moves for summary judgment contending Plaintiff cannot establish an employment relationship with Chrysler and, alternatively, cannot present evidence to substantiate her claim of gender discrimination.

A party seeking summary judgment bears the initial responsibility of identifying those portions of the pleadings, depositions, and admissions which together with any affidavits demonstrate the absence of a genuine issue of material fact. *Celotex v. Catrett,* 106 S.Ct. 2548, 2553 (1986).

Generally, a factual dispute is "genuine" where "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 106 S.Ct. 2505, 2510 (1986). In other words, the nonmoving party must produce evidence that could cause reasonable persons to disagree on whether the facts claimed by the moving party are true: "enough to require a jury or judge to resolve the parties' differing versions of the truth." *Aydin v. Loral Corp.,* 718 F.2d 897, 902 (9th Cir. 1983). Furthermore, the court must view the evidence presented in the light most favorable to the nonmoving party, with "all justifiable inferences . . . drawn in his favor." *Anderson, supra,* 477 U.S. at 255, 106 S.Ct. at 2513.

Chrysler asserts the allegations of being denied a dealer franchise are insufficient because the relationship

between Chrysler and its dealers or franchisees is not an employment relationship.

Title VII protections only apply where there is some connection with an employment relationship. *Baker v. McNeil Island Corrections Center,* 859 F.2d 124 (9th Cir. 1988). Thus, an independent contractor cannot bring a Title VII claim.

The Ninth Circuit has held "[t]he distinction between employment and an independent contractual affiliation depends upon the economic realities of the situation." *Lutcher v. Musicians Union Local 47,* 633 F.2d 880, 883 (9th Cir. 1980). In analyzing these economic realities, a primary factor is "[t]he extent of the employer's right to control the *means and manner* of the worker's performance." *Id.* (emphasis added). The court also identified several additional factors:

> (1) the kind of occupation, with reference to whether the work usually is done under the direction of a supervisor or is done by a specialist without supervision; (2) the skill required in the particular occupation; (3) whether the "employer" or the individual in question furnishes the equipment used and the place of work; (4) the length of time during which the individual was worked; (5) the method of payment, whether by time or by the job; (6) the manner in which the work relationship is terminated; *i.e.,* by one or both parties, with or without notice and explanation; (7) whether annual leave is afforded; (8) whether the work is an integral part of the business of the "employer"; (9) whether the work accumulates retirement benefits; (10) whether the "employer" pays

> social security taxes; and (11) the intention of the parties.

Id. at 883 n.5 (citing *Spirides v. Reinhardt*, 613 F.2d 826, 829 (D.C. Cir. 1979)).

In *Mitchell v. Frank R. Howard Memorial Hosp.*, 853 F.2d 762 (9th Cir. 1988), the Ninth Circuit applied *Lutcher* to find a radiologist who was under contract with a hospital was an "employee" for purposes of Title VII analysis. The radiologist had served for five years under an oral contract when the hospital terminated the agreement in order to enter into an exclusive contract with a new doctor. The radiologist sued, claiming the hospital violated Title VII by discriminating against him on religious grounds. *Id.* at 763. The district court dismissed the Title VII count with prejudice because the plaintiff did not have an employment relationship with either the hospital or with his patients. *Id.* at 766.

Applying *Lutcher*, the Ninth Circuit reversed this portion of the district court's ruling, finding the plaintiff's allegations he was an employee of the hospital legally sufficient at the pleading stage. *Id.* at 766-67. The court relied on the following facts in reaching this result: (1) all radiology services were performed at the hospital; (2) at least some of the equipment used was hospital equipment; and (3) the radiologist was paid by the hospital, not the patients. *Id.* Additionally, the court found it could be inferred, from the facts alleged, that the hospital had considerable control over the means and manner of the radiologist's performance. *Id.* at 766-67.

The parties in this case agree the relationship between Chrysler and its dealers is primarily defined by

a Sales and Service Agreement ("Agreement") and the Additional Terms and Provisions of the Agreement. Plaintiff also does not dispute several of the *Lutcher* factors favor Chrysler's position. For example, dealers rather than Chrysler own the dealerships' equipment and location. Chrysler does not pay its dealers except when it reimburses them for warranty services the dealership provides. Chrysler does not pay social security or other taxes for the dealers.

Several other of the *Lutcher* factors do not apply to this situation. The parties do not discuss annual leave, the degree of skill required for the position Plaintiff sought or the length of employment.

However, Plaintiff contends the Agreement and Additional Provisions vested substantial rights to control the means and manner of the dealer's performance in Chrysler. Plaintiff cites several provisions of these documents she alleges create a supervisory relationship. The Additional Provisions require the dealer to conduct its operations "at least during the hours usual in the trade" in the sales locality. Plaintiff asserts this provision requires the dealership to remain open for certain hours and allows Chrysler to supervise these hours. This provision, however, leaves the actual hours to the dealer's discretion and does not create a situation where Chrysler will review the dealer's decision.

The Agreement requires the dealer to specify persons who will actively, substantially and continuously participate in the management of the dealership and to agree that at least one of those individuals will be on-site while the dealership is open. Further, the dealer cannot alter the

personnel holding or extent of management participation of those individuals without prior written approval from Chrysler. It appears from the Agreement, however, these individuals and their positions were designated by the dealer, not Chrysler, and that, while Chrysler's approval was required for changes the dealer wanted to make in the positions of those persons, there is no provision allowing Chrysler to change the employees' position or responsibilities.

Plaintiff also cites the control Chrysler maintained over the products available to the dealership as evidence of supervision. As a manufacturer, Chrysler controls the types of vehicles produced, the number of vehicles produced and the prices of the vehicles it produces. This reflects not Chrysler's supervisory role over the dealers but Chrysler's role as a manufacturer. Similarly, Chrysler to a certain extent controls the allocation of the vehicles. For example, although the dealer may order any vehicles or parts and Chrysler agrees to use its best efforts to fulfill those orders, Chrysler reserves the right to allocate the vehicles in a geographical area as it sees fit.

Plaintiff fails to demonstrate, however, how this arrangement differs from any other where one party distributes products supplied by another or creates a situation where Chrysler "supervises" choices the dealer makes. It may limit the choices available to the dealers at the outset and vests the right to distribute vehicles in situations where the supply of vehicles is limited. However, the purpose is not to supervise the dealer's activities but to distribute products based on information the dealer may not have. Similarly, Chrysler's requirement

that the dealer comply with all applicable laws does not create a supervisory relationship.

These are not, however, the only requirements specified in the Agreement. Chrysler determines the dealers' minimum sales responsibilities which will be altered at the request of the dealer to account for local conditions only if Chrysler finds it appropriate. Chrysler also retains the right to approve the interior and exterior appearance of the dealership, specifies the location of the dealership and required the dealership to meet certain financial standards including net working capital, net worth, wholesale credit and retail financing arrangements. While these provisions establish a continuing relationship between Chrysler and the dealerships, they do not demonstrate Chrysler supervises the day-to-day activities of the dealership owners.

The Agreement requires the dealership owner to maintain an adequate number of competent personnel at the dealership and retains the right to specify training for the personnel. These provisions only require the dealership to maintain the minimum number of personnel necessary to successfully conduct its business. Once again, however, discretion is vested in the dealer. This term does not impose a significant limitation on the dealer's discretion or place Chrysler in a position of supervising the dealer's employment decisions.

The Agreement further states the dealer will engage in advertising and sales promotion programs to help fulfill the dealer's responsibility to promote Chrysler products vigorously and aggressively. The dealer must also maintain information (accounting and otherwise) in

a manner allowing Chrysler easy access to and use of the information. As with the other requirements, these terms establish the relationship between Chrysler and the dealers but do not significantly limit the dealers' discretion in performing these functions. Unlike *Mitchell* where the Ninth Circuit found the plaintiff had alleged an employment relationship, Plaintiff cites no evidence the dealers use any facilities belonging to Chrysler (in fact they purchase the dealerships outright), perform any services for Chrysler (other than warranty service for which they are reimbursed) or receive any compensation from Chrysler for their activities.

The termination procedures of the Agreement permit the dealer to terminate upon thirty (30) days notice, but Chrysler can terminate on sixty (60) days notice upon the occurrence of certain circumstances. Termination is automatic upon the occurrence of other events (such as death of a sole proprietor, assignment of the contract without prior consent, insolvency etc.)

All of these factors evidence the intent of the parties to enter into a continuing contract, not an employment relationship. The Agreement specifically states it "does not create the relationship of principal and agent between [Chrysler] and dealer, and under no circumstances is either party to be considered the agent of the other."

Plaintiff further contends Chrysler illegally discriminated against her by denying her application to become a dealer candidate for a dealership in San Juan Capistrano. Apparently, this position was to be filled through Chrysler's Dealer Development Program. When Plaintiff inquired about the San Juan Capistrano dealership, she

was told another dealer had been designated for that location, however Chrysler sent her an application for the Dealer Development Program. Chrysler later told Plaintiff the dealership was awarded to the other candidate and Plaintiff was not eligible for the Dealer Development Program because she was not black or hispanic.

Even assuming the Dealer Development Program creates an employment relationship, Plaintiff's claims based on this incident necessarily fail. Before filing a civil lawsuit, a plaintiff in an employment discrimination action must file a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). Claims in a subsequent civil action exceeding the allegations in the EEOC charge violate Title VII's requirement of exhaustion of administrative remedies and cannot support a judgment. *Sosa v. Hiraoka*, 920 F.2d 1451, 1456 (9th Cir. 1990). Conduct not specifically referenced in the EEOC charge may be actionable if the incidents are "like or reasonably related to the allegations of the EEOC charge. . . . " *Brown v. Continental Can Co.*, 765 F.2d 810, 813 (9th Cir. 1985). Whether the exhaustion requirement is satisfied depends on the fit between the administrative claim, the EEOC investigation and any subsequent allegations. *Greenlaw v. Garrett*, 59 F.3d 994, 1000 (9th Cir. 1995).

Plaintiff filed a Charge of Discrimination with the EEOC in 1994 listing only the denial of her credit application and dealership application in June 1993. Although this charge was filed after the decision not to award Plaintiff the San Juan Capistrano dealership, that incident was not referenced in the EEOC charge. The EEOC charge involved the application for the Taft dealership and there is no indication that investigation would have led to an

investigation of the San Juan Capistrano dealership. Moreover, Plaintiff's First Amended Complaint specifically references Chrysler's conduct with respect to the Taft dealership but does not mention the San Juan Capistrano dealership. As such, Plaintiff may not rely on this incident to defeat the motion for summary judgment.

Finally, the denial of the San Juan Capistrano dealership does not support a prima facie case of gender discrimination. The elements of the prima facie require Plaintiff to show: (1) she was female; (2) she was qualified to receive the dealership; (3) the dealership remained open to other applicants; (4) the person awarded the dealership was male; and, (5) the circumstances give rise to an inference that gender was the likely reason for the failure to grant the dealership to the plaintiff. *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973); *Texas Dep't of Community Affairs v. Burdine,* 450 U.S. 248 (1981).

The evidence in this case is that Plaintiff was denied the San Juan Capistrano dealership because the position was to be filled through Chrysler's Dealer Development Program which is open only to ethnic minorities. Plaintiff may have been denied the dealership because she is caucasian, but not because she was female. Even if the Court were to consider the evidence of the San Juan Capistrano incident, the facts do not give rise to an inference of gender discrimination and fail to establish a *prima facie* case of gender discrimination.

The motion for summary judgment is GRANTED.

DATED: March 19, 1997

/s/ Gary L. Taylor
GARY L. TAYLOR
UNITED STATES
DISTRICT JUDGE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Irvine, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 19700 Fairchild, Suite 230, Irvine, California 92612. On July 17, 1987, I served the documents named below on the parties in this action as follows:

DOCUMENT(S) SERVED: **CIVIL APPEALS DOCKETING STATEMENT**

SERVED UPON: **SEE ATTACHED SERVICE LIST**

[X] (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Irvine, California. I am readily familiar with the practice of The Benice Group for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

* * *

APPENDIX C

CHRYSLER CORPORATION CHRYSLER SALES AND SERVICE AGREEMENT

Chrysler Corporation
CHRYSLER
SALES AND SERVICE AGREEMENT

San Joaquin Motors, Inc. dba San Joaquin Chrysler Jeep Dodge [DEALER Firm Name and D/B/A if applicable] located at 531 Center Street Taft CA. [STREET-CITY STATE] a(n) Corporation [INDIVIDUAL CORPORATION OR PARTNERSHIP] hereinafter called DEALER, and Chrysler Corporation, a Delaware corporation, hereinafter sometimes referred to as "CC", have entered into this Chrysler Corporation Chrysler Sales and Service Agreement, hereinafter referred to as "Agreement", the terms of which are as follows:

INTRODUCTION

The purpose of the relationship established by this Agreement is to provide a means for the sale and service of specified Chrysler vehicles and the sale of CC vehicle parts and accessories in a manner that will maximize customer satisfaction and be of benefit to DEALER and CC.

While the following provisions, each of which is material, set forth the undertakings of this relationship, the success of those undertakings rests on a recognition of the mutuality of interests of DEALER and CC, and a spirit of understanding and cooperation by both parties in the day to day performance of their respective functions. As a result of such considerations, CC has entered into this Agreement in reliance upon and has placed its trust in the

personal abilities, expertise, knowledge and integrity of DEALER's principal owners and management personnel, which CC anticipates will enable DEALER to perform the personal services contemplated by this Agreement.

It is the mutual goal of this relationship to promote the sale and service of specified CC products by maintaining and advancing their excellence and reputation by earning, holding and furthering the public regard for CC and all CC dealers.

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1 PRODUCTS COVERED

DEALER has the right to order and purchase from CC and to sell at retail only those specific models of CC vehicles, sometimes referred to as "specified CC vehicles," listed on the Motor Vehicle Addendum, attached hereto and incorporated therein by reference. CC may change the models of CC vehicles listed on the Motor Vehicle Addendum by furnishing DEALER a superseding Motor Vehicle Addendum. Such a superseding Motor Vehicle Addendum will not be deemed or construed to be an amendment to this Agreement.

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2 DEALER'S MANAGEMENT

CC has entered into this Agreement relying on the active, substantial and continuing personal participation in the management of DEALER's organization by:

NAME	POSITION
Edward C. Moseley	President
Chris B. Patton	Vice President

[REDACTED]

DEALER represents and warrants that at least one of the above named individuals will be physically present at the DEALER's facility (sometimes referred to as "Dealership Facilities") during most of its operating hours and will manage all of DEALER's business relating to the sale and service of CC products. DEALER shall not change the personnel holding the above described position(s) or the nature and extent of his/her/their management participation without the prior written approval of CC.

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3 DEALER'S CAPITAL STOCK OR PARTNERSHIP INTEREST

If DEALER is a corporation or partnership, DEALER represents and agrees that the persons named below own beneficially the capital stock or partnership interest of DEALER in the percentages indicated below. DEALER warrants there will be no change affecting more than 50% of the ownership interest of DEALER nor will there be any other change in the ownership interest of DEALER which may affect the managerial control of DEALER without CC's prior written approval.

Name	Voting Stock	***	***	Active Yes/No
Edward C. Moseley				Yes
Chris B. Patron				Yes
_____	_____ %	___	___	___
_____	_____ %	___	___	___
_____	_____ %	___	___	___
Total	100%			

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4 SALES LOCALITY

DEALER shall have the non-exclusive right, subject to the provisions of this Agreement, to purchase from CC those new specified CC vehicles, vehicle parts, accessories and other CC products for resale at the DEALER's facilities and location described in the Dealership Facilities and Location Addendum, attached hereto and incorporated herein by reference. DEALER will actively and effectively sell and promote the retail sale of CC vehicles, vehicle parts and accessories in DEALER's Sales Locality. As used herein, "Sales Locality" shall mean the area designated in writing to DEALER by CC from time to time as the territory of DEALER's responsibility for the sale of CC vehicles, vehicle parts and accessories, although DEALER is free to sell said products to customers wherever they may be located. Said Sales Locality may be shared with other CC dealers of the same line-make as CC determines to be appropriate.

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5 ADDITIONAL TERMS AND PROVISIONS

The additional terms and provisions set forth in the document entitled "Chrysler Corporation Sales and Service Agreement Additional Terms and Provisions" marked "Form 91 (C-P-D)," as may hereafter be amended from time to time, constitute a part of this Agreement with the same force and effect as if set forth at length herein, and the term "this Agreement" includes said additional terms and provisions.

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6 FORMER AGREEMENTS, REPRESENTATIONS OR STATEMENTS

This Chrysler Corporation Chrysler Sales and Service Agreement and other documents, (or their successors as specifically provided for herein) which are specifically incorporated herein by reference constitute the entire agreement between the parties relating to the purchase by DEALER of those new specified CC vehicles, parts and accessories from CC for resale; and it cancels and supersedes all earlier agreements, written or oral, between CC and DEALER relating to the purchase by DEALER of Chrysler vehicles, parts and accessories, except for (a) amounts owing by CC to DEALER, such as payments for warranty service performed and incentive programs, or (b) amounts owing or which may be determined to be owed, as a result of an audit or investigation by DEALER to CC due to DEALER's purchase from CC of vehicles, parts, accessories and other goods or services, or (c) amounts DEALER owes to CC as a result of other extensions of credit by CC to DEALER. No representations or

statements, other than those expressly set forth herein or those set forth in the applications for this Agreement submitted to CC by DEALER or DEALER's representatives, are made or relied upon by any party hereto in entering into this agreement.

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7 WAIVER AND MODIFICATION

No waiver, modification or change of any of the terms of this Agreement or change or erasure of any printed part of this Agreement or addition to it (except the filling in of blank spaces and lines) will be valid or binding on CC unless approved in writing by the President or a Vice President or the National Dealer Placement Manager of Chrysler Corporation.

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8 AMENDMENT

DEALER and CC recognize that this Agreement does not have an expiration date and will continue in effect unless terminated under the limited circumstances set forth in Paragraph 28. DEALER and CC further recognize that the passage of time, changes in the industry, ways of doing business and other unforeseen circumstances may cause CC to determine that it should amend all Chrysler Corporation Chrysler Sales and Service Agreements. Therefore, CC will have the right to amend this Agreement to the extent that CC deems advisable, provided that CC makes the same amendment in Chrysler Corporation Chrysler Sales and Service Agreements generally. Each such amendment will be issued in a notice sent by certified mail or delivered in person to DEALER and signed by the

President or a Vice President or the National Dealer Placement Manager of Chrysler Corporation. Thirty-five (35) days after mailing or delivery of such notice to DEALER, this Agreement will be deemed amended in the manner and to the extent set forth in the notice.

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9 ARBITRATION

Any and all disputes arising out of or in connection with the interpretation, performance or non-performance of this Agreement or any and all disputes arising out of or in connection with transactions in any way related to this Agreement (including, but not limited to, the validity, scope and enforceability of this arbitration provision, or disputes under rights granted pursuant to the statutes of the state in which DEALER is licensed) shall be finally and completely resolved by arbitration pursuant to the arbitration laws of the United States of America as codified in Title 9 of the United States Code, §§ 1-14, under the Rules of Commercial Arbitration of the American Arbitration Association (hereinafter referred to as the "Rules") by a majority vote of a panel of three arbitrators. One arbitrator will be selected by DEALER (DEALER's arbitrator). One arbitrator will be selected by CC (CC's arbitrator). These arbitrators must be selected by the respective parties within ten (10) business days after receipt by either DEALER or CC of a written notification from the other party of a decision to arbitrate a dispute pursuant to this Agreement. Should either CC or DEALER fail to select an arbitrator within said ten-day period, the party who so fails to select an arbitrator will have its arbitrator selected by the American Arbitration

Association upon the application of the other party. The third arbitrator must be an individual who is familiar with business transactions and be a licensed attorney admitted to the practice of law within the United States of America, or a judge. The third arbitrator will be selected by DEALER's and CC's arbitrators. If said arbitrators cannot agree on a third arbitrator within thirty (30) days from the date of the appointment of the last selected arbitrator, then either DEALER's or CC's arbitrator may apply to the American Arbitration Association to appoint said third arbitrator pursuant to the criteria set forth above. The arbitration panel shall conduct the proceedings pursuant to the then existing Rules.

Notwithstanding the foregoing to the extent any provision of the Rules conflict with any provision of this Paragraph 9, the provisions of this Paragraph 9 will be controlling.

CC and DEALER agree to facilitate the arbitration by: (a) each party paying to the American Arbitration Association one-half (1/2) of the required deposit before the proceedings commence; (b) making available to one another and to the arbitration panel, for inspection and photocopying all documents, books and records, if determined by the arbitrator to be relevant to the dispute; (c) making available to one another and to the arbitration panel personnel directly or indirectly under their control, for testimony during hearings and prehearing proceedings if determined by the arbitration panel to be relevant to the dispute; (d) conducting arbitration hearings to the greatest extent possible on consecutive business days; and (e) strictly observing the time periods established by the

Rules or by the arbitration panel for the submission of evidence and of briefs.

Unless otherwise agreed to by CC and DEALER, a stenographic record of the arbitration shall be made and a transcript thereof shall be ordered for each party, with each party paying one-half (1/2) of the total cost of such recording and transcription. The stenographer shall be state-certified if certification is made by the state, and the party to whom it is most convenient shall be responsible for securing and notifying such stenographer of the time and place of the arbitration hearing(s).

If the arbitration provision is invoked when the dispute between the parties is either the legality of terminating this Agreement or of adding a new CC dealer of the same line-make or relocating an existing CC dealer of the same line-make, CC will stay the implementation of the decision to terminate this Agreement or add such new CC dealer or approve the relocation of an existing CC dealer of the same line-make until the decision of the arbitrator has been announced, providing DEALER does not in any way attempt to avoid the obligations of this Paragraph 9, in which case the decision at issue will be immediately implemented.

Except as limited hereby, the arbitration panel shall have all powers of law and equity, which it can lawfully assume, necessary to resolve the issues in dispute including without limiting the generality of the foregoing, making awards of compensatory damages, issuing both prohibitory and mandatory orders in the nature of injunctions and compelling the production of documents and

witnesses for pre-arbitration discovery and/or presentation at the arbitration hearing on the merits of the case. The arbitration panel shall not have legal or equitable authority to issue a mandatory or prohibitory order which: (a) extends or has effect beyond the subject matter of this Agreement, or (b) will govern the activities of either party for a period of more than two years; nor shall the arbitration panel have authority to award punitive, consequential or any damages whatsoever beyond or in addition to the compensatory damages allowed to be awarded under this Agreement.

The decision of the arbitration panel shall be in written form and shall include findings of fact and conclusions of law.

It is the intent and desire of DEALER and CC to hereby and forever renounce and reject any and all recourse to litigation before any judicial or administrative forum and to accept the award of the arbitration panel as final and binding, subject to no judicial or administrative review, except on those grounds set forth in 9 USC § 10 and § 11. Judgment on the award and/or orders may be entered in any court having jurisdiction over the parties or their assets. In the final award and/or order, the arbitration panel shall divide all costs (other than attorney fees, which shall be borne by the party incurring such fees and other costs specifically provided for herein) incurred in conducting the arbitration in accordance with what the arbitration panel deems just and equitable under the circumstances. The fees of DEALER's arbitrator shall be paid by DEALER. The fees of CC's arbitrator shall be paid by CC.

10 SIGNATURE

This Agreement becomes valid only when signed by the President or a Vice President or the National Dealer Placement Manager of Chrysler Corporation and by a duly authorized officer or executive of DEALER if a corporation; or by one of the general partners of DEALER if a partnership; or by DEALER if an individual.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement which is finally executed at

DETROIT, Michigan, in triplicate, on APR 14 1994

San Joaquin Motors, Inc.
dba San Joaquin Chrysler Jeep Dodge
DEALER Firm Name and D/B/A, (if applicable)

By /s/ Illegible
(Individual Duly Authorized to Sign)

/s/ Pres.
(Title)

CHRYSLER CORPORATION

By /s/ Illegible
National Dealer

Placement Manager
(Title)

MOTOR VEHICLE ADDENDUM

To

Chrysler Corporation

SALES AND SERVICE AGREEMENT

San Joaquin Motors, Inc.
(Dealer Firm Name)

San Joaquin Chrysler Jeep Dodge
(CBA)

Taft — CA
(City) — (State)

As of the effective date of this Motor Vehicle Addendum to the Chrysler Corporation Sales and Service Agreement between Dealer and Chrysler Corporation, Dealer, as an authorized Chrysler Corporation dealer, has a non-exclusive right to purchase the following new models of Motor Vehicles:

All passenger cars of the Chrysler line make.

All trucks of the Chrysler line make.

This Motor Vehicles Addendum shall remain in effect unless and until superseded by a new Motor Vehicle Addendum furnished Dealer by Chrysler Corporation.

Effective Date: APR 14 1994

CHRYSLER CORPORATION

By /s/ Illegible
(Signature)

National Dealer
Placement Manager
(Title)

APPENDIX D

CHRYSLER CORPORATION SALES AND SERVICE AGREEMENT ADDITIONAL TERMS AND CONDITIONS SUMMARY

	Topic	Section/Title/ Location	Description
1.	Complete control over minimum sales requirement	Section 11(a)/Selling, Service, Compliance/ p. 2; col. 2	"DEALER will sell the number of new CC vehicles necessary to fulfill DEALER'S Minimum Sales Responsibility . . ." In assessing this minimum number CC computes "in its sole discretion . . . " CC may rely on its own data to compute the numbers if other data is not available.
2.	Complete control over service	Section 11(a)/Selling, Service, Compliance/ p. 3; col. 1	"DEALER shall comply with parts, service and warranty guides established by CC from time to time. . ." "DEALER shall perform all predelivery and road ready services recommended by CC on new CC vehicles DEALER sells." "DEALER shall, at all times during this Agreement, meet its minimum service satisfaction requirements . . ."
3.	Complete access to Dealer records	Section 11(b)/Selling, Service, Compliance/ p. 3; col. 2	"DEALER agrees that CC may inspect DEALER's books and records regarding any warranty service or other claims for compensation DEALER may submit to CC."
4.	Complete control over Dealer operations	Section 11(c)/Selling, Service, Compliance/ p. 4; col. 1	"DEALER shall comply with all applicable federal, state and local laws, rules or regulations in the operation of the dealership." Dealer is obligated to pay social security taxes, state and federal taxes and other mandatory retirement benefits.
5.	Complete and ongoing control over facilities and location	Section 11(d)(i)/ Selling, Service, Compliance/ p. 4; col. 1	"[N]ew and used vehicle display area, salesrooms, service area, parts and accessories area, building exterior and grounds will be satisfactory to CC as to appearance and layout, and will be maintained . . ." (Emphasis added.) "DEALER shall not . . . either directly indirectly establish any place or places of business for conduct of its Dealership Operations other than at the Dealership Facilities and Dealership location as set forth" in the agreement.
6.	Complete and ongoing control over time of operations	Section 11(d)(i)/ Selling, Service, Compliance/ p. 4; col. 1	"DEALER shall conduct its Dealership Operations only from the dealership location and dealership facilities mentioned and in the manner and at least during the hours usual in the trade in DEALER's Sales Locality."

	Topic	Section/Title/ Location	Description
7.	Complete control over Dealer's use of facilities	Section 11(d)(i)/ Selling, Service, Compliance/ p. 4; col. 1	"If all of the Dealership Facilities are not at the same location, DEALER shall not utilize any separate portion of the Dealership facilities for the conduct of any Dealership Operations other than as specified . . ." This regulates internal operations.
8.	Complete control in change in facilities or location	Section 11(d)(ii)/ Selling, Service, Compliance/ p. 4; col. 2	"DEALER shall not make any change in the location of Dealership Operations or make <u>any</u> change in the are and use of Dealership Facilities without the prior written approval of CC." (Emphasis added.)
9.	Complete control over finances	Section 11(e) Finances p. 4; col. 2	"DEALER shall maintain and employ in connection with DEALEr's business such net working capital, net worth and wholesale credit and retial financing arrangements . . . in accordance with guides therfor as may be issued by CC from time to time." Chrysler can dictate the entire financial dealings of a dealer.
10.	Complete control of Dealer technical employee hiring and training	Section 11(f) Personnel p. 4; col. 2	"DEALER shall employ in accordance with the volume of DEALER's business such number of competent technicians . . ." "In particular and without limitation to the generality of the foregoing, DEALER <u>shall cause</u> it service personnel to receive such training from time to time required by CC . . ." (Emphasis added.) "Failure to comply with the service training requirements . . . may result in suspension of deliveries of CC vehicles. . ."
11.	Complete control of Dealer sales employee hiring and training	Section 11(f) Personnel p. 5; col. 1	"DEALER shall employ and maintain for its retail business a number of trained and competent new and used motor vehicle sales, lease, service, parts and general management personnel . . ." "In particular and without limitation of the generality of the foregoing, DEALER shall cause its sales personnel to receive such training from time to time <u>as may be required by CC</u> . . ." (Emphasis added.)
12.	Complete control over signs	Section 11(g) Signage p. 5; col. 1	DEALER can only display signs that comply with Chrysler policies <u>as set unilaterally by Chrysler</u> and subject <u>to changes unilaterally by Chrysler</u>.
13.	Complete control over advertising	Section 12 Advertising p. 5; col. 1	"DEALER shall engage in advertising and sales promotion programs . . ." Dealers are required to advertise.
14.	Complete control over records and disclosure	Section 13 Reports, Records p. 5; col. 2	"[DEALER] will follow accounting practices, satisfactory to CC . . ." "DEALER agrees that CC may ant any time for confidential use inspect DEALER's books and records . . ." "DEALER shall maintain an electronic data storage, transmission and communication system in the manner and form required from time to time by CC."

	Topic	Section/Title/ Location	Description
15.	Complete allocation of vehicles	Section 14 Orders p. 6; col. 1	"[D]EALER acknowledges that CC has the right to allocate such supply in any reasonable manner CC deems fit in any geographical market."
16.	Complete lack of Chrysler accountability	Section 18 Delay or Failure p. 6; col. 2	"CC shall not be liable for delay or failure to fill orders that have been accepted . . ."
17.	Complete control over pricing, terms of payment	Section 21 Prices, Charges, Terms of Purchase p. 7; col. 1	"CC reserves the right, without prior notice, to change prices, charges and terms of purchase for any product sold under this Agreement." (Emphasis added.)
18.	Complete control over sale and supply of parts	Section 23 Sale and Supply of Parts p. 8; col. 1	"DEALER at all times shall keep on hand in DEALER's place of business the number and assortment of Chrysler Corporation or Mopar parts, that, in CC's judgment, is necessary to meet the service requirements of DEALER's CC customers . . ." (Emphasis added.)
19.	Complete control over termination with notice	Section 28 Termination pp. 9 - 10	Chrysler may terminate the agreement with notice for any violation of the provisions listed above. Chrysler relies on vague terms such as "disagreements," "impairment," and "conduct," which may adversely affect the operation of the dealership. Chrysler, in its "opinion" determines whether to terminate.
20.	Complete control over termination without notice	Section 28 Termination p. 11	Chrysler may also terminate without notice for a variety of reasons including transfer of the Agreement or a substantial portion of the assets.
21.	Complete control over assignment	Section 38 Assignment p. 16, col. 1	"DEALER may not assign or transfer this Agreement, or any part hereof, or delegate any duties or obligations under this Agreement without the written consent of CC, executed by President or a Vice President of the National Dealer Placement Manager of Chrysler Corporation."